

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EXPORT DEVELOPMENT CANADA

Plaintiff,

- against -

EAST COAST POWER & GAS, LLC,

Defendants.

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21-CV-3758 (NRB) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order addresses Plaintiff EDC's letter request at Dkt. 81 concerning documents for which Defendant East Coast asserts privilege or other protection from disclosure. East Coast has responded by letter at Dkt. 86.

1. The parties dispute the nature of a draft document putatively prepared by East Coast's in-house counsel (the "Disputed Document"). The Disputed Document apparently also is in dispute in New York State court litigation where ConEd is the plaintiff against East Coast. By April 11, 2024, East Coast shall submit the Disputed Document and its exhibits for in camera review by this Court, along with an affidavit or declaration (which shall be filed in the public record) based on personal knowledge providing an evidentiary basis for claiming privilege or other protection for the Disputed Document. Further, within three days of the state court's decision on East Coast's motion for reconsideration regarding the Disputed Document, East Coast shall file a copy of the decision with this Court.

2. Also by April 11, 2024, East Coast shall file an affidavit or declaration based on personal knowledge providing an evidentiary basis for redaction of any handwritten notes

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from the documents from East Coast's privilege log that the Court has ordered be produced in whole or in part. The attestations required by this paragraph and paragraph 1 may be filed either separately or as a single affidavit or declaration.

3. East Coast has not yet produced to EDC the documents from its privilege log that the Court ordered be produced by order issued on March 22, 2024 (Dkt. 76). EDC's request for permission to challenge privilege claims for additional documents is denied without prejudice to renewal after East Coast's production and EDC's review thereof and/or an order from this Court finding that the Disputed Document was misdescribed or was improperly claimed as privileged or otherwise protected.

4. To the extent permitted by law, the Court extends the time to object to the Court's rulings on EDC's challenges to East Coast's privilege log until all challenges to logged documents have been determined by the Court.

The Court respectfully directs the Clerk of Court to terminate the letter motion at Dkt. 81.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 5, 2024
New York, New York

Copies transmitted this date to all counsel of record.